IN THE SUPREME COURT OF THE

UNITED STATES
October Term, 1978

No. 78-365

TERRY BRUCE CREPS,
Petitioner,

v.

THE STATE OF NEVADA,
Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

ROBERT LIST
Attorney General, State of Nevada

LARRY R. HICKS
Washoe County District Attorney

JOHN L. CONNER
Deputy District Attorney
P.O.Box 11130
Washoe County Courthouse
Reno, Nevada

ATTORNEYS FOR RESPONDENT

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1978

No. 78-365

TERRY BRUCE CREPS,

Petitioner,

v.

THE STATE OF NEVADA,

Respondent.

Response to Petition for Writ of Certiorari

JURISDICTION

The State of Nevada does not contest Petitioner's reliance on 28 U.S.C. §1257(3) as a jurisdictional basis for this proceeding.

STATEMENT OF THE CASE

Petitioner's statement of the case adequately frames the factual posture of this case.

REASONS FOR DECLINING REVIEW

Petitioner's due process challenge to the legality of the sentence imposed in the Nevada courts rests on his claim that the Federal Constitution requires that state trial judges articulate specific reasons for rendering a given sentence in a criminal case. This Court has heretofore rejected a similar claim. **Dorszynski v. United States**, 418 U.S. 424 (1974).

In **Dorszynski**, a majority of this Court specifically stated that a federal district judge need not articulate the reasons for imposing a sentence that did not include use of the ameliorative sentencing provisions of the Federal Youth Corrections Act. Mr. Chief Justice Burger, writing for the majority, opened his analysis of the questions raised by restating the general proposition that ". . .once it is determined that a sentence is within the limitations set forth in the statute under which it is imposed, appellate review is at an end. (Footnote and citations omitted.)" **Dorszynski**, supra at 431. The Chief Justice went on to note that while judges electing to impose a sentence "outside the Act" must give a record indication of rejection of the optional sentencing scheme, those judges need not make a record as to the specific reasons supporting the sentence ultimately imposed. **Dorszynski**, supra at 441-443. In discussing the potential effect of a "stated reasons" requirement, the Chief Justice noted that the ". . .only purpose of such a requirement would be to facilitate appellate supervision of, and thus to limit, the trial court's sentencing discretion. (Footnote omitted.)" **Dorszynski**, supra at 441-442.

The request made in this instance would have the same effect. Imposition of the requirement requested by

the Petitioner would foster increased appellate participation in a process that by its very nature requires much more than review of a cold record. Moreover, the appellate courts of this country are ill-equipped to embark on an enterprise so alien to the nature of appellate practice.

It must also be noted in passing that this Court in **Dorszynski** declined to impose a "stated reasons" requirement on the federal judiciary in the limited context of youthful offender cases. The breadth of the relief sought here would result in impositon of a requirement that would reach all state sentences imposed. The immediate and expansive practical effects of Petitioner's request weight heavily against the demand made in this instance.

Traditional considerations of comity likewise militate against review. If this Court is not prepared to impose a specificity requirement in the exercise of its federal supervisory jurisdiction, a fortiori, there is no basis to read such a requirement into the Due Process Clause of the Fourteenth Amendment. Cf. **Cupp v. Naughton**, 414 U.S. 141 (1973).

Petitioner's reliance on **Townsend v. Burke**, 334 U.S. 736 (1948) and **United States v. Tucker**, 404 U.S. 443 (1972), both pre-**Dorszynski** opinions, is misplaced. Both **Townsend** and **Tucker** involved fact patterns in which the record on its face indicated reliance on materially false or constitutionally infirm information. **Townsend** and **Tucker,** as exceptions to the general rule precluding appellate review, presuppose appellate ability to focus on specific misinformation. Neither case imposes any constitutional imperative as to the manner in which a sentencing record is to be structured or potential misinformation is to be identified.

Viewing **Townsend** and **Tucker** as limited exceptions to the general rule prohibiting review, it is apparent from a reading of **Dorszynski** that the question presented has already been determined by this Court. It is likewise clear that the Nevada Supreme Court's treatment of the question is in accord with applicable decisions of this Court. In these circumstances, review is not required. **[SCR 19(1)(a)].**

Finally, the Nevada Supreme Court noted in its opinion that testimony presented at trial identified Creps as ". . .more than a casual seller." **(Petitioner's Appendix at p. 7).** The Petitioner's ability to deal in a quantity of cocaine having substantial street value, his ability to deal in amphetamines in substantial quantity, and his offer to continue doing business on a regular basis afford more than ample support for the trial judge's conclusion that Creps was heavily involved in narcotics traffic. Cf. **United States v. Pizzo**, 453 F. 2d 1063, 1065-1066 (3d Cir. 1972). That conclusion resulted in imposition of only sixty days in jail as a condition of probation. The Petitioner then faced a statutory maximum sentence of twenty years in prison. **[See NRS 453.321(2)(a) -- Appendix A.]** Aside from the procedural impediments imposed by **SCR 19**, review of this case would be "artificial" and "unrealistic" as remand would doubtless yield the same result. Cf. **United States v. Tucker**, supra at 449.

CONCLUSION

This Court has consistently adhered to the general rule that sentences falling within statutory parameters are generally not subject to appellate scrutiny. **Dorszynski**, supra at 431-432 and cases cited there. Petitioner

asks this Court to use limited exceptions to that rule to subsume the rule itself. No prior decision of this Court lends credence to that extreme position. Furthermore, the fact pattern before the Court is such that full review and remand would likely yield an identical result. The facts of this case do not warrant the expansive consideration requested by the Petitioner.

Accordingly, the State of Nevada respectfully requests that the petition be denied.

Respectfully submitted.

ROBERT LIST
Attorney General, State of Nevada

LARRY R. HICKS
Washoe County District Attorney

JOHN L. CONNER
Deputy District Attorney

Attorneys for Respondent

APPENDIX A

The sentencing provision applied in Petitioner's case, NRS 453.321(2)(a)(1), read in pertinent part as follows:

NRS 453.321

. . .

2. Any person 21 years of age or older who sells, exchanges, barters, supplies or gives away a controlled or counterfiet substance in violation of subsection 1 classified in:

(a) Schedule I or II, to a person who is:

(1) Twenty-one years of age or older shall be punished by imprisonment in the state prison for not less than 1 year nor more than 20 years and may be further punished by a fine of not more than $5,000. For a second or subsequent offense, such offender shall be punished by imprisonment in the state prison for life, without possibility of parole, and may be further punished by a fine of not more than $5,000. If the offender has previously been convicted of any violation of the laws of the United States or any state, territory or district relating to a controlled substance, the term of imprisonment imposed pursuant to this subsection shall be served without benefit of probation.

The statute has since been amended. Confirmation of the language of the statute at the time of sentencing appears at pp. 1411-1413 of Volume 2 of the 1977 Statutes of Nevada.